IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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| ROTHSCHILD PATENT IMAGING, LLC | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | CASE NO. 2:16-cv-01382-RWS |
| | § | |
| TRENDNET, INC., | § | |
| | § | |
| Defendant. | § | |

**DEFENDANT TRENDNET, INC.'S MOTION TO DISMISS FOR**
**FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Defendant TRENDnet, Inc. ("Defendant" or "TRENDnet") respectfully files this motion pursuant to Federal Rule of Civil Procedure 12(b)(6), seeking an Order of the Court dismissing Plaintiff Rothschild Patent Imaging, LLC's "Plaintiff' or "RPI") Complaint alleging infringement of United States Patent Nos. 8,437,797 (the "'797 Patent"), 8,594,722 ("the '722 Patent"), and 8,204,437 ("the '437 Patent") (collectively "Patents-in-Suit"), and would show as follows.

## I. INTRODUCTION

On December 9, 2016, RPI filed a Complaint against TRENDnet ("Complaint") alleging infringement of the three Patents-in-Suit.[1] The three Patents-in-Suit have identical title of "WIRELESS IMAGE DISTRIBUTION SYSTEM AND METHOD".

While some different claims are presented in these Patents-in-Suit, they share the same specification, the same element numbering, and the same set of drawings from Fig. 1 to Fig. 11.

[1] Starting 8/26/2016, Plaintiff filed a total of 19 cases in Eastern District of Texas. TRENDnet's case is among the latest batch of eight (8) cases filed on 12/9/2016. A few cases appeared to have reached settlement between the parties, before appearance by counsel in court. For example, the *RPI v. Foursquare Labs* case, 16-cv-01165, ran a 3-month life cycle from filing on 10/14/2016 to 1/17/2017 when the Dismissal Order was issued.

The ‘722 Patent is a continuation of the ‘797 Patent, which in turn is a continuation of the ‘437 Patent. Such continuity relationship is expressly stated in column 1 of the two later patents: ‘722 and ‘797.

Near the bottom of column 12 of each of the three Patents-in-Suit, the exact same paragraph was copied and pasted from earlier application to later ones and is repeated as shown herein, before a transitional phrasing of “Now that the invention has been described,” followed by the claims presented.

> Since many modifications, variations and changes in detail can be made to the described preferred embodiment of the invention, it is intended that all matters in the foregoing description and shown in the accompanying drawings be interpreted as illustrative and not in a limiting sense. Thus, the scope of the invention should be determined by the appended claims and their legal equivalents.

**A) The ‘437 infringement allegations.**

Count III of the Complaint alleged that TRENDnet “sells, offers to sell, and/or uses wireless security cameras, including, without limitation, the SecureView Day/Night Pan/Tilt/Zoom Internet Camera TV-IP422 (A1.0R) and/or Trendnet WiFi Baby Cam (“Product”), which infringes at least claim 1 of the ‘437 Patent”. (* Note: Blue font is intentionally done, to clearly map to the limitation in the claim, detailed below. *)

Plaintiff’s allegation in Count III of the Complaint is that TRENDnet’s accused Product infringes upon claim 1 of the ‘437 Patent by satisfying the “all elements rule”: “Practicing less than all elements of a claim is not patent infringement under §271(a). *Warner-Jenkinson v. Hilton Davis Chemical*, 520 U.S. 17, 40 (1997).

Claim 1 is recited herein:

1. A system to distribute at least one digital photographic image, said system comprising:

at least one capturing device and at least one receiving device,

said capturing device and said receiving device being cooperatively disposable in a communicative relation with one another via at least one wireless network,

said at least one capturing device comprising a capture assembly, said capture assembly being structured to selectively capture the at least one digital photographic image,

said capturing device further comprising a first network component, wherein said first network component is structured to communicate the at least one digital photographic image to said receiving device via said at least one wireless network, and

said receiving device comprising a second network component, wherein said second network component is structured to receive the at least one digital photographic image from said capturing device via said at least one wireless network, wherein

said capturing device and said receiving device are disposed in a selectively paired relationship with one another,

said selectively paired relationship is at least partially based on said capturing device and said receiving device being cooperatively associated with at least one common pre-defined pairing criteria, and

said pre-defined pairing criteria comprises a geographic location of said capturing device.

The major elements of the claimed subject is depicted by Fig. 1 of the '437 Patent shown herein, with some claim limitations identified in 3:14 – 22 of '437 Patent (these major elements are color-coded for ease of referencing):

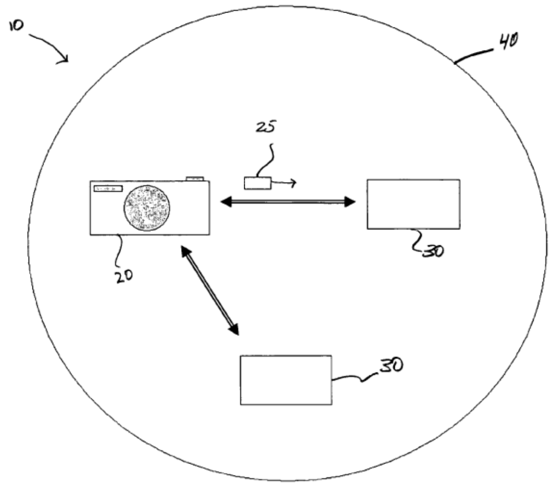
10: system

20: capturing device (accused Product)

30: receiving device

40: wireless network

Fig. 1 is shown on the right:



**B) The '797 Patent (Count I) and '722 Patent (Count II) infringement allegations.**

Plaintiff's allegation in Count I of the Complaint is that Accused Products infringed upon claim 6 of the '797 Patent. Plaintiff's allegation in Count II of the Complaint is that the Accused Products infringed upon claims 1 and 5 of the '722 Patent.

Claim 6 of the '797 Patent is set forth below:

6. An image-capturing mobile device, comprising
a wireless receiver;
a wireless transmitter; and
a processor operably connected to the wireless receiver and the wireless transmitter, wherein the processor is configured to initiate and/or perform
receiving a plurality of photographic images;
filtering the plurality of photographic images using a transfer criteria;
transmitting, via the wireless transmitter and to a second mobile device, the filtered plurality of photographic images; and
receiving, via the wireless receiver and from the second mobile device, the transfer criteria.

Claims 1 and 5 of the '722 Patent is set forth below:

1. An image-capturing mobile device, comprising
a wireless receiver;
a wireless transmitter; and
a processor operably connected to the wireless receiver and the wireless transmitter, wherein the processor is configured to initiate and/or perform
receiving a plurality of photographic images;
filtering the plurality of photographic images using a transfer criteria; and
transmitting, via the wireless transmitter and to a second mobile device, the filtered plurality of photographic images, wherein
the image-capturing mobile device and the second mobile device are disposed in a electively paired relationship with one another based upon a geographic location of at least one of the plurality of photographic images.

5. A method performed by an image-capturing mobile device, comprising
receiving a plurality of photographic images;
filtering the plurality of photographic images using a transfer criteria; and
transmitting, via a wireless transmitter and to a second image capturing device, the filtered plurality of photographic images, wherein
the image-capturing mobile device and the second mobile are disposed in a selectively paired relationship with one another based upon a geographic location of at least one of the plurality of photographic images.

## II. ISSUE TO BE DECIDED

Whether Plaintiff's infringement allegations stated in the Complaint, per 35 U.S.C. § 271, present plausible claims for relief.

## III. LEGAL STANDARD

Under Fed. Civ. P. Rule 8(a), a complaint must contain a "short and plain" statement of the claim showing that the plaintiff is entitled to relief." If a complaint fails to show plausible claim for relief, the defendant may move to dismiss under Rule 12(b)(6).

Under Rule 12(b)(6), a court must dismiss a complaint if it fails to state a claim upon which relief can be granted. *See, e.g., Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). When considering a motion to dismiss under Rule 12(b)(6), a court must assume that all well-pleaded facts are true, and view those facts in the light most favorable to the plaintiff. *Bowlby v. City of Aberdeen,* 681 F.3d 215, 218 (5th Cir. 2012). The court must then decide whether those facts state a claim that is plausible on its face. *Bowlby*, 681 F.3d at 217. "A claim is plausible if the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *United States v. Bollinger Shipyards, Inc.*, 775 F.3d 255, 260 (5th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* The Court, however, is not required to accept "legal conclusions … cast in the form of factual allegations." *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

## IV. ARGUMENT

To plausibly state a case of infringement, Plaintiff must allege that all elements are found within the accused Product and that the Product works in a manner with other elements or other actions as set forth in the claim, satisfying the "all elements rule", *Warner Jenkinson*, supra.

**A) The asserted claim in the '437 Patent is a system with multiple elements.**

To infringe the asserted claim of the '437 Patent, Plaintiff has to identify a System (10) having at least one Capturing Device (20) and at least one Receiving Device (30); said Capturing Device (20) and said Receiving Device (30) are in a communicative relationship via at least one Wireless Network (4); other limitations exist as shown in the claim. Fig. 1 gave a clear depiction of all these major elements.

Element 25 represents a photo image, which is a subject matter captured by a camera, identified as a Capturing Device 20, and transmitted to a Receiving Device 30, via Wireless Network 40.

The accused Product (the camera product identified, used for capturing photo images) is the Capturing Device 20, as identified in ¶49 of the Complaint.

The claimed subject matter is a System, with the elements expressly recited in claim 1, including at least the other missing elements not stated herein. To infringe upon claim 1, which encompasses more than a Capturing Device, Plaintiff has to allege other separate and distinct elements beyond identifying the accused Product: Receiving Device 30, Wireless Network 40, as well as other limitations set forth in the claim.

An easy analogy is that Plaintiff has a patent for the composition of a car, which is a system made up of various elements/limitations. Accusing a backup-camera installed in the car does not rise to the level of plausible claim for relief for the asserted infringement of the claim: a car.

There is no possible way for Plaintiff to amend the allegations to meet the Rule 8(a) standard. All that is said in Count III of the Complaint is that TRENDnet sells or offers to sell certain Capturing Device 20.

The accused Product is but one limitation in the asserted claim. There is no infringement of a system claim that can be pled by alleging the existence of one single limitation.

Accordingly, the Court should dismiss Count III of the Complaint for failure to state a claim upon which relief can be granted.

**B) The asserted claims in the '722 Patent and '797 Patent are directed to a "mobile" device.**

As shown by the red font highlight in the asserted claims, Accused Products must be a "mobile" device'.

Throughout the patent documents and the prosecution history of the Patents-in-Suit, there is NO definition of "mobile" device. This runs counter to the patent regulations regarding "claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description" (emphasis added). 37 CFR §1.75(d)(1).

In light of this "mobile" term having been expressly divorced from any teaching or definition given in the specification, some clues can be found within the specification, where a "digital camera" is treated as one example of a "image capturing mobile device", see 1:16-18 of the '797 Patent and '722 Patent.

The only other places to divine the meaning of "mobile device" are found in ¶¶19, 35 of the Complaint, where Plaintiff treated tablets and smartphones as "second mobile devices". There are references to "mobile security camera" in the Complaint, corresponding to the "capturing mobile device" term, but these references did not shed light on the understanding of the "mobile" term.

In the absence of any evidence to the contrary, we must presume that the use of different terms in the claims connotes different meanings. *Micash, Inc. v. NetSpend Corp.*, No. 2:12-CV-248-JRG, 2013WL3803470, at *10 (E.D. Tex. July 17, 2013), citing to *Cae Screenplates v. Heinrich Fiedler*, 224 F.3d. 1308 (Fed. Cir. 2000). Here, the claim terms are all deriving from the same specification, and both the "image-capture device" and "image-capturing mobile device" are used. There is nothing to show that these two terms are the same (otherwise, the express term of "mobile" would mean nothing); the "image-capturing mobile device" must be some device that's both "image-capturing" **and** "mobile". The plain and ordinary meaning of "mobile" would be, by Plaintiff's understanding, the same type of "mobile" attribute as exhibited by tablets and smartphones, and a digital camera given as an example in the specification.

Certainly, the "mobile device" may be given a different meaning than the plain and ordinary one and the usage in ¶¶19 and 35 of the Complaint. However, the patentee did not show any intention to use/define the "mobile device" differently, throughout the application and prosecution history. ("Whenever an inventor chooses to be his own lexicographer and to give terms uncommon meanings, he must set out his uncommon definition in some manner within the patent disclosure." *Intellicall, Inc. v. Phonometrics*, 952, F.2d 1384, 1388 (Fed. Cir. 1992).

The Accused Products, however, are not "mobile" devices the way it is understood in the plain and ordinary sense. The Accused Products (the images and installation information for the accused TRENDnet TV-IP422 camera and Wifi Baby Cam are widely available online) are supposed to be installed/fixed to a certain location (a wall, a baby crib, for example) and not for carrying around the way tablets or smartphones are being used, in the commonly understood way of being "mobile". As such, there is no plausible claim Plaintiff can plead against the Accused Products, because they simply are not "mobile" devices.

Accordingly, the Court should dismiss Counts I and II of the Complaint for failure to state a claim upon which relief can be granted.

## V. CONCLUSION

The unreasonableness of Plaintiff's claim of infringement cannot be more pronounced. Identifying one single limitation/component in the '437 Patent's system claim consisting of multiple limitations/components provides no plausible claim for relief. And, accusing a non-mobile device of infringing upon claims that require the "mobile" attribute in both the '722 Patent and '797 Patent is equally unavailing. The Court is respectfully requested to note Plaintiff's objectively unreasonable allegations of infringement and dismiss the Complaint with prejudice.

## VI. PRAYER

Defendant TRENDnet, Inc. respectfully prays that the Court grants its motion to dismiss for failure to state a claim upon which relief can be granted, and for such other relief to which Defendant may show itself justly entitled.

Dated: February 2, 2017

Respectfully submitted,

By: */s/ Eric C. Wood*

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ATTORNEYS FOR DEFENDANT
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2017, a true and correct copy of the foregoing document has been sent to all counsel of record by electronic mail through ECF filing in accordance with the Federal Rules of Civil Procedure and the local rules of the Eastern District of Texas.

*/s/ Eric C. Wood*
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